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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/777,442

02/12/2004

Eric C. Humphries

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WIGGIN AND DANA LLP

ATTENTION: PATENT DOCKETING

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EXAMINER

LUKS, JEREMY AUSTIN

ART UNIT

PAPER NUMBER

2837

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/22/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/777,442

Applicant(s)

HUMPHRIES ET AL.

Examiner

Jeremy Luks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-15 and 17-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-15, and 17-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 12/11/06.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 3-4, 6-7, 9-12, 14-15, 17-18, 20-21, 23-26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donnelly (2003/0019170) in view of Rerup (5,406,039) and Schondelmayer (6,314,687).

With respect to Claims 1, 6-7, 9-11, 14-15, 20-21, 23-25 and 28, Donnelly teaches a first vertically-mounted post (Figure 12, #70, on left side of figure) including a first slot (72) disposed therein, the first slot (72) extending lengthwise along a side of the first post (70); and having a first width a second vertically-mounted post (70, on right side of figure) spaced apart from the first post (70), the second post (70) including a second slot (72) disposed therein, the second slot (72) extending lengthwise along a side of the second post (70) and having a second width; and a first panel assembly (20) extending between the first and second posts (70) and into both said first slot (72) and second slot (72), the first panel assembly (20) including a sheet of material having top, bottom, and side edges forming a perimeter of the sheet (Figure 11, Examiner is referring to inner ribs, #22 and the cavities surrounding them, which make up the sheet), said sheet having a sheet thickness that is less than the said first slot (72) width,

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and a frame (Examiner is referring to the solid outer perimeter of the panel #20 in Figure 12) disposed along the entire perimeter of the sheet, wherein side portions of the frame capture the entire perimeter of the top, bottom and side edges of the sheet, the side portions of the frame being received within the first and second slots (70) in drop-down fashion (Figure 13). Donnelly fails to teach a frame disposed along at least a portion of the perimeter of the sheet, wherein side portions of the frame include a base portion disposed outside one of the side edges of the sheet and first and second flange portions projecting outward from the base portion on opposite sides of the sheet to define and edge thickness and to capture at least a portion of the side edges of the sheet, wherein said edge thickness is greater than said sheet thickness and less than said first slot with such that the side portions of the frame are effective for being received within the first and second slots in drop-down fashion; and the base portion and the first and second flanges are coupled to one another and are disposed outside the entire perimeter of the sheet, and the channel formed by the base portion and the first and second flanges capture a portion of each of the top, bottom, and side edges of the sheet; and the base portion and the first and second flanges are formed from a single piece of material, or the first and second flanges are formed from tubing coupled to a plate forming the base portion. Rerup teaches a frame (Figure 4, #70) disposed along at least a portion of the perimeter of a sheet (30), wherein side portions of the frame (70) include a base portion (70a) disposed outside one of the side edges of the sheet (30) and a first flange portion (70b) projecting outward from the base portion (70) on a side of the sheet (30) to define and edge thickness and to capture at least a portion of the side edge of the sheet (30),

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wherein said edge thickness is greater than said sheet (30) thickness and less than a first slot (slot portion of frame member #50) with such that the side portions of the frame are effective for being received within the slots (slot portion of frame member #50) in drop-down fashion, and the base portion (70) and the first flanges (70b) are formed from a single piece of material. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Donnell, with the apparatus of Rerup to allow for thinner panels assemblies to be put into existing posts via a frame portion. Further, with respect to second flange portions, it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Schondelmayer teaches first and second flange portions (298) disposed on both sides of the sheet and outside the entire perimeter of the sheet (150), and the channel (88, 108) formed by the base portion (20) and the first and second flanges (298) capture a portion of each of the top, bottom, and side edges of the sheet (150); and the first and second flanges (298) are formed from tubing coupled to a plate forming the base portion (20) (See tube configuration of flange 298, Figure 19). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Donnelly as modified, with the apparatus of Schondelmayer to provide a more secure connection between the frames and slots.

With respect to Claims 3 and 17, Donnelly teaches wherein the sheet (Figure 11, Examiner is referring to inner ribs, #22 and the cavities surrounding them, which make up the sheet), has a thickness substantially less than a width of each of the first and second slots (72) (See Figure 11).

With respect to Claims 4 and 18, Donnelly is relied upon for the reasons and disclosures set forth above. Donnelly fails to teach wherein the sheet has a thickness less than a thickness of the first flange and less second a thickness of the second flange. Schondelmayer teaches wherein the sheet (Figures 1 and 2, #150) has a thickness less than a thickness of the first flange (298) and less second a thickness of the second flange (298). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Donnelly, with the apparatus of Schondelmayer to fit a thinner panel within slot of an existing post via a frame assembly.

With respect to Claims 12 and 26, Donnelly teaches a second panel assembly (Figure 12, #20) extending between the first and second posts (70), and the frame of the first panel assembly (20) includes at least one of a protrusion (40) and a recess (30) disposed on a base portion for interlocking with the second panel assembly (20) (Page 2, [0043]).

2. Claims 5, 8, 13, 19, 22 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donnelly (2003/0019170), Rerup (5,406,039) and Schondelmayer (6,314,687) as applied to claims 1 and 15, and further in view of Pickett (4,214,411). Donnelly, Rerup and Schondelmayer are relied upon for the reasons and disclosures set forth above. Donnelly, Rerup and Schondelmayer fail to teach wherein the sheet is formed from a transparent material; an elastomeric gasket disposed between the outer surfaces of the side portions of the frame and surfaces forming the channel, and covering at least a portion of the side edge of the sheet captured within the channel.

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Pickett teaches a sheet (Figure 1, #2) formed from a transparent material (Col. 2, Lines 59-66); an elastomeric gasket (Figure 3, #8) disposed between the outer surfaces of the side portions of a frame (9) and surfaces (10) forming a channel (see channel formed by bracket #9), and covering at least a portion of the side edge (3) of a sheet (2) captured within a channel (see channel formed by bracket #9) (Col. 3, Lines 1-5 and Col. 5, Lines 31-33). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Donnelly as modified, with the apparatus of Pickett to provide a secure structure capable of withstanding extreme force and weather conditions, within an acoustically tight manner, and to provide travelers with a view outside of the roadway.

Response to Arguments

3. Applicant's arguments with respect to claims 1, 3-15 and 17-28 have been considered but are moot in view of the new ground(s) of rejection. The Examiner considers the obvious combination of Donnelly, Rerup, Schondelmayer and Pickett to teach all of the limitations as claimed by Applicant.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

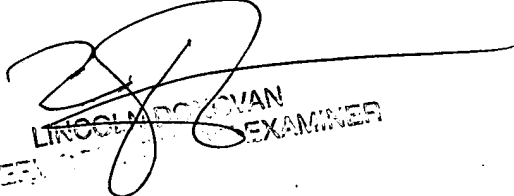
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy Luks whose telephone number is (571) 272-2707. The examiner can normally be reached on Monday-Thursday 8:30-6:00, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on (571) 272-1988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeremy Luks
Patent Examiner
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